

REMARKS

This communication is a second after final (AF) response to the Final Office Action on the merits of October 28, 2008 ("the OA"). The first AF response was timely filed on January 13, 2009. The instant amendment shows only new claim amendments based on entry of the January 13, 2009 AF claim amendments.

Telephonic Interview of February 12, 2009

Applicants thank the Examiner for the helpful and courteous telephonic interview of February 12, 2009, where Applicants' representative Gregory Einhorn and Examiner discussed outstanding issues and discussed proposed amendments to the claims to place this application in condition for allowance.

Applicants have endeavored to incorporate the Examiner's suggested claim amendments in this second AF amendment, and understand that an additional telephonic interview may be necessary to place all claims in final condition for allowance.

Status of the Claims

Pending claims

Claims 1 to 5, 7 to 25, 28 to 34, 36 to 61, 63 to 74, 96 to 114, 116 to 127 and 129 to 133 are pending in this application.

The instant amendment shows only new claim amendments based on entry of the January 13, 2009, claim amendments.

Canceled claims

Claims 32, 44, 45, 52 to 54, 56, 57, 63 and 64 are canceled without prejudice or disclaimer. Accordingly, after entry of this second AF amendment, 1 to 5, 7 to 9 to 25, 28 to 31, 33, 34, 36 to 43, 46 to 51, 55, 58 to 61, 65 to 74, 96 to 114, 116 to 127 and 129 to 133 will be pending.

Outstanding Rejections

Claims 25, 29, 31, 33, 34, 36 and 37 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Queen et al. USPN 5,693,762. Claims 25 and 29 to 31, are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Bendig et al. USPN 5,558,864. Claims 25, 28, 29, 31, 33, 34,

36 and 37, are rejected under 35 U.S.C. §102(e) as allegedly anticipated by Baca et al. USPN 6,884,879. Claims 1 to 5, 7 to 25, 28 to 34, 36 to 61, 63 to 74, 96 to 114, 116 to 127 and 129 to 133, are newly rejected as allegedly not complying with 35 U.S.C. §112, first paragraph, written description requirement. Applicants respectfully traverse all outstanding rejections of the claims.

Support for the Claim Amendments

The specification sets forth an extensive description of the invention in the claims as amended in this and previous responses; see also this application's publication U.S. Pat App Pub. No. 20040229310 ("the '310 publication"). For example, support for vectors such as expression vectors having contained therein nucleic acids used in the methods of this invention can be found *inter alia* in paragraph [0076] of the '310 publication. Support for embodiments wherein at least 95% of the different amino acid positions in the non-human FR are substituted can be found *inter alia* in paragraph [0115] of the '310 publication. Accordingly, no new matter has been added and the amendment should be properly entered.

Applicants respectfully request entry of the amendments set forth in this response under 37 CFR §1.116. The amendment places the case in condition for allowance and places the case in better condition for appeal; the amendment does not raise any issues of new matter; and, the amended and/or new claims do not present new issues requiring further consideration or search.

Issues under 35 U.S.C § 102

Applicants expressly incorporate their response and amendment of January 13, 2009.

Applicants have endeavored to incorporate the Examiner's suggested claim amendments in this second after final amendment to address any of the Office's remaining concerns regarding section 102 issues.

Accordingly, in light of these Remarks and the instant amendment and the Remarks and amendment of January 13, 2009, the section 102 rejections should be properly withdrawn.

Issues under 35 U.S.C. §112, first paragraph, written description

Applicants expressly incorporate their response and amendment of January 13, 2009.

Applicants have endeavored to incorporate the Examiner's suggested claim amendments in this second after final amendment to address any of the Office's remaining concerns regarding section 112 written description (WD) requirement issues.

Accordingly, in light of these Remarks and the instant amendment and the Remarks and amendment of January 13, 2009, the section 112, WD requirement rejections should be properly withdrawn.

CONCLUSION

In view of the foregoing amendment and remarks, and the response and amendment of January 13, 2009, Applicants respectfully aver that the Examiner can properly enter the amendments set forth in this response under 37 CFR §1.116, and can properly withdraw the rejection of the pending claims under 35 U.S.C. §102(b), 35 U.S.C. §102(e) and 35 U.S.C. §112, first paragraph. In view of the above, all claims pending in this application after entry of the instant amendment are believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 146392004900. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

As noted above, Applicants have endeavored to incorporate the Examiner's suggested claim amendments in this second AF amendment, and understand that an additional telephonic interview may be necessary to place all claims in final condition for allowance.

Dated: February 13, 2009

Respectfully submitted,

By /Gregory P. Einhorn/
Gregory P. Einhorn
Registration No.: 38,440
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
(858) 720-5133 direct line
general office 858 720 5100
fax direct 858 523 5933
fax office 858 720 5125

email geinhorn@mofo.com